

ORIGINAL  
cc-SOM

Of Counsel:  
KAWAMURA LAW OFFICE  
Attorneys At Law

ROBERT D. KAWAMURA 4537-0  
107 Lawyers Building  
550 Halekauwila Street  
Honolulu, Hawaii 96813  
Telephone: (808) 523-3777  
Facsimile: (808) 523-3780  
Email: Honolaw@aol.com

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

AUG 03 2006 *Ag*  
at 3 o'clock and 40 min. M  
SUE BEITIA, CLERK

Attorneys for Plaintiffs/Limitation Defendants  
SHIROH FUKUOKA, Individually and  
as Personal Representative of  
THE ESTATE OF MITSUKO FUKUOKA, and  
as Next Friend Of MIHO FUKUOKA, a Minor

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

In the Matter	)	Civil No. CV03-00672SOM
	)	(Non-Vehicle Tort)
Of	)	
	)	
The Complaint of MORNING STAR	)	
CRUISES, INC., a Hawaii	)	
corporation.	)	
SHIROH FUKUOKA,	)	Civil No. 04-00588 SOM-BMK
	)	(Consolidated)
Plaintiff,	)	
	)	<b>LIMITATION DEFENDANTS' BRIEF</b>
Vs.	)	<b>TO THE COURT RE THE CASE</b>
	)	<b>REMAINING IN FEDERAL COURT;</b>
MORNING STAR CRUISES, INC.,	)	<b>CERTIFICATE OF SERVICE</b>
	)	
Defendant.	)	<b>Date: August 21, 2006</b>
	)	<b>Time: 11Z;15 a.m.</b>
	)	<b>Judge: Susan Oki Mollway</b>
	)	
	)	

**LIMITATION DEFENDANTS' BRIEF TO THE COURT RE  
THE CASE REMAINING IN FEDERAL COURT**

SCANNED

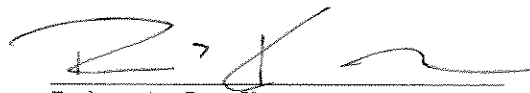
I. Introduction

In light of the Ninth Circuit's recent decision in Lively v. Wild Oats Markets, Inc., No. 04-056682, wherein the court held that "the forum defendant rule is procedural, and therefore a violation of this rule is a waivable defect in the removal process that cannot form the basis for a district court's sua sponte remand order.", Limitation Plaintiffs concede that this Court may maintain jurisdiction over these consolidated cases.

II. Conclusion

Based on the foregoing, Limitation Defendants respectfully concede that the Honorable court may retain jurisdiction over these consolidated cases.

Dated: Honolulu, Hawaii, August 3, 2006.

  
Robert D. Kawamura

Attorney for Limitation  
Defendants  
SHIROH FUKUOKA, Individually  
and as Personal Representative  
of THE ESTATE OF MITSUKO  
FUKUOKA, and as Next Friend Of  
MIHO FUKUOKA, a Minor

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	)	(Consolidated)
Plaintiff,	)	
	)	<b>CERTIFICATE OF SERVICE</b>
Vs.	)	
	)	
MORNING STAR CRUISES, INC.,	)	
	)	
Defendant.	)	
	)	

**CERTIFICATE OF SERVICE**

THE UNDERSIGNED HEREBY CERTIFIES THAT on the date  
below a copy of the foregoing was duly served upon the following  
party by way of hand delivery at the following address;

Gregory K. Markham, Esq.  
Keith K. Kato, Esq.  
Desiree Hikida Mokuohai, Esq.  
CHEE & MARKHAM  
1000 American Savings Bank Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813

Attorneys for Limitation Plaintiff  
MORNING STAR CRUISES, INC.

Dated: Honolulu, Hawaii, August 3, 2006.

  
Robert D. Kawamura

Attorney for Plaintiffs/  
Limitation Defendants  
SHIROH FUKUOKA, Individually  
And as Personal  
Representative of THE ESTATE  
OF MITSUKO FUKUOKA, and  
as Next Friend Of MIHO  
FUKUOKA, a Minor